

N° 3068.

ALLEMAGNE ET TURQUIE

Convention concernant les relations juridiques en matières civile et commerciale. Signée à Angora, le 28 mai 1929.

GERMANY AND TURKEY

Convention concerning Legal Relations in Civil and Commercial Matters. Signed at Angora, May 28, 1929.

TEXTE TURC. — TURKISH TEXT.

N° 3068. — TÜRKİYE¹ CÜMHURİYETİ İLE ALMANYA DEVLETİ ARASINDA HUKUKİ VE TİCARİ MEVADDI ADLIYEYE MÜTEALLİK MÜNASEBATI MÜTEKABİLEYE DAİR MUKAVELENAME. ANKARA, 28. MAYIS 1929.

German and Turkish official texts communicated by the German Consul-General at Geneva. The registration of this Convention took place October 22, 1932.

TÜRKİYE CÜMHURİYETİ ile ALMANYA DEVLETİ, türk tebaasının Almanyada ve Alman tebaasının Türkiyede mevaddı hukukiye ve ticariyede himayei adliyesini, kezalik iki memleket adliye dairelerinin yekdiğerine karşı ifası ile mükellef oldukları muaveneti mütekabileyi tanzim etmek arzusunda bulduklarından bu bapta bir mukavele aktine karar vermişler ve murahhasları olmak üzere :

TÜRKİYE REİSİ CÜMHURU :

sabık Hariciye Müsteşarı ve Tokat meb'usu Ali ŞEVKİ Beyefendi ve

ALMANYA DEVLETİ REİSİ :

Almanya Devletinin Türkiyede fevkalâde Büyük Elçi ve Murahhası olan Herr Rudolf NADOLNY Cenaplarını,
ve Almanya Devletinin Müşavırı Has sıfatını haiz İzmir birinci sınıf Jeneral Konsolosu Herr Wilhelm PADELİ

intihap etmişlerdir.

Bu Murahhaslar haiz oldukları salâhiyetnameleri yekdiğerine irae ederek usulüne muvafık bulduktan sonra aşağıdaki ahkâmı kararlaştırmışlardır :

FASIL I.

HİMAYEİ ADLIYE.

Madde 1.

(1) Âkit devletlerden her birinin tebaası diğèrinin toprağında şahıs ve mallarının kanunî ve adlî himayesi hususlarında tebaai mahalliyenin tabi oldukları aynı muameleden müstefit olacaklardır.

(2) Bu hususta mahkemelere serbestçe müracaat edecekler ve tebaanın tabi olduğu aynı merasim ve şeraitle ikamei dava edebileceklerdir.

¹ The exchange of ratifications took place at Berlin, August 17, 1931.
Came into force November 18, 1931.

¹ TRANSLATION.

No. 3068. — CONVENTION BETWEEN THE GERMAN REICH AND THE TURKISH REPUBLIC CONCERNING LEGAL RELATIONS IN CIVIL AND COMMERCIAL MATTERS. SIGNED AT ANGORA, MAY 28, 1929.

THE GERMAN REICH and THE TURKISH REPUBLIC, being desirous of settling, so far as civil and commercial matters are concerned, questions relating to the legal protection of nationals of the German Reich in Turkey and nationals of the Turkish Republic in Germany and to the obligation of the judicial authorities in the two countries to assist each other in legal matters, have agreed to conclude a convention for that purpose and have appointed as their Plenipotentiaries :

THE PRESIDENT OF THE GERMAN REICH :

- M. Rudolf NADOLNY, Ambassador Extraordinary and Plenipotentiary of the German Reich in Turkey, and
M. Wilhelm PADEL, Privy Councillor of Legation and German Consul-General of the First Class in Smyrna ;

THE PRESIDENT OF THE TURKISH REPUBLIC :

- Ali ŞEVKI Bey, Former Under-Secretary of State in the Ministry of Foreign Affairs, Member of Parliament for Tokat ;

Who, having communicated their full powers, found in good and due form, have agreed on the following provisions :

SECTION I.

LEGAL PROTECTION.

Article 1.

1. The nationals of each of the contracting States shall, in the territory of the other State, enjoy in all matters connected with the legal and judicial protection of their persons and their property the same treatment as nationals of the country.

2. They shall therefore have free access to the courts and be entitled to bring and defend actions before the courts under the same conditions and in the same manner as nationals of the country.

Article 2.

1. No security or deposit of any description whatsoever may be required of nationals of either State, domiciled in one of the two countries, who appear as plaintiffs or interveners before the courts of the other State, by reason of their foreign nationality or of the fact that they are not domiciled or resident in the country.

¹ Translated by the Secretariat of the League of Nations, for information.

2. The same provision shall apply in regard to any payment in advance that may be required of plaintiffs or interveners for the purpose of covering legal costs.

Article 3.

1. If an order to pay the costs of an action is made in the territory of one State against a plaintiff or intervener who is exempted from giving security, making a deposit or paying advances in virtue of Article 2 or of the laws in force in the country in which the action was brought, such order shall be declared to be executory without charge by the competent authority of the other State.

2. The application may be made either through the diplomatic channel or direct to the competent authority by the party concerned.

3. The same rule shall apply to judicial decisions by which the amount of the costs of the action is fixed later.

Article 4.

1. The decisions regarding costs mentioned in Article 3 shall be declared executory without the parties being heard but without prejudice to the right of subsequent appeal by the losing party in accordance with the legislation of the country in which execution is to take place.

2. The authority competent to decide on the application that a judgment should be declared to be executory shall limit his action to considering :

(a) Whether according to the laws of the country in which the judgment has been pronounced the decision has acquired the force of law ;

(b) Whether the operation part of the judgment is accompanied by a translation in the language of the State to which application is made, certified correct by a diplomatic or consular representative of the applicant State or by a sworn translator of the applicant State or of the State to which application is made.

3. The condition laid down in paragraph 2 (a) shall be fulfilled if the competent authority of the applicant State declares that the judgment has acquired the force of law. The competence of that authority shall be attested by the highest official of the judicial administration of the said State. The declaration and attestation in question shall be translated as laid down in paragraph 2 (b).

4. The authority competent to decide on the application that the judgment be declared executory shall also, on an application made at the same time by the party concerned, fix the amount of the costs for the translation and certification provided for in paragraph 2 (b). Such costs shall be regarded as costs of the action.

Article 5.

Nationals of either contracting State shall be admitted to the benefits of free legal aid in the territory of the other State under the same conditions as nationals of the country.

Article 6.

1. The certificate of inadequate means shall be made out by the authorities of the applicant's habitual place of residence or, failing such, by the authorities of his residence at the time.

2. If the applicant does not reside in the country in which free legal aid is applied for, the certificate of inadequate means shall be legalised free of charge by a diplomatic or consular representative of the country in which the document is to be produced.

3. Should the applicant not reside in either State, a certificate from the competent diplomatic or consular representative of his State shall be sufficient.

Article 7.

1. Should the applicant reside in the country in which free legal aid is applied for, the authority competent to issue the certificate of inadequate means may make enquiries from the authorities of the State of which the applicant is a national with regard to his financial position.

2. The authority that has to give a decision on the application for free legal aid shall retain the right, within the limits of its official powers, to verify the accuracy of the certificates and particulars submitted to it, and to obtain further communications in order to be adequately informed.

Article 8.

If free legal aid is granted to a national of either State by the competent authority, the same right shall also be granted to him in all proceedings connected with the same case taking place before the courts of the other State under the provisions of the present Convention.

SECTION 2.

LEGAL ASSISTANCE.

Article 9.

1. In civil and commercial matters the service of documents emanating from the authorities of one State and addressed to persons who are in the territory of the other State shall be effected after a request has been addressed by the consul of the applicant State to the authority to be designated by the State to which application is made. The request shall indicate the authority from which the document to be served emanates, the names and status of the parties, the address of the recipient, and the nature of the document to be served ; the request shall be made in the language of the State to which application is made. A translation of the document to be served, legalised in the manner provided for in Article 4, paragraph 2 (*b*), shall be attached to the request.

2. The authority to which the request is addressed shall forward to the consul the document certifying that service has been effected or shall communicate the circumstance which has prevented service. Should the authority have no local jurisdiction it shall, of its own proper motion, forward the request to the competent authority and immediately notify the consul thereof.

Article 10.

1. The competent authority of the State applied to shall be responsible for the service of documents. This authority may, save in the cases provided for in paragraph 2, limit its action to effecting service by handing over the document to the recipient if he is willing to accept it.

2. At the request of the authority making application, the authority applied to shall serve the document in the form prescribed by the law of its own country for the service of similar documents or in a special form, so far as this is not incompatible with such law.

Article 11.

Proof of service shall be furnished either by an acknowledgment of receipt from the recipient duly dated and legalised, or by a certificate from the authority of the State applied to, setting forth the fact, manner and date of service.

Article 12.

1. In civil and commercial matters the judicial authorities of one State may, in accordance with the provisions of their law, apply to the competent authorities of the other State by means of "letters of request" for the execution of an act of procedure or other judicial measures within their jurisdiction.

2. "Letters of request" shall be forwarded by the consul of the State making application to the authority to be designated by the State applied to. The request shall be accompanied by a translation in the language of the State to which application is made and this translation should be certified correct by a diplomatic or consular representative of the State making the application or by a sworn translator of the State making the application or of the State applied to.

3. The authorities receiving the "letters of request" shall forward to the consul the document certifying that the request has been complied with or setting forth the circumstances which have prevented action being taken. Should they have no local jurisdiction they shall, without any further request being necessary, forward the "letters of request" to the competent authority and immediately notify the consul hereof.

Article 13.

1. It shall be incumbent on the judicial authority to whom the "letters of request" are addressed to give effect thereto and, in so doing, he shall use the same compulsory measures as are employed in the execution of "letters of request" emanating from the authorities of his own country. Compulsory measures need not be employed if it is a question of the parties to the dispute appearing in person.

2. The authority applied to shall, when executing the "letters of request" apply, so far as the procedure to be followed is concerned, the law of his country. Nevertheless, an application by the authority making the request that some special procedure may be followed, shall be acceded to, provided that such procedure is not incompatible with the law of the State applied to.

3. The applicant authority shall, if he so desires be informed of the date and place of execution of the "letters of request" in order that the interested party may be able to be present.

Article 14.

Any difficulties that may arise in connection with a request from the consul for service or "letters of request" transmitted by him shall be settled through the diplomatic channel.

Article 15.

The execution of a request for service or of "letters of request" may be refused if the State in the territory of which the execution is to take place considers that its sovereignty, its safety or public order might be compromised thereby. The execution of a request may also be refused if the authenticity of the document is not established or if in the territory of the State applied to the execution of the request does not fall within the functions of the judiciary.

Article 16.

1. No fees or charges of any kind shall be payable in respect of the execution of requests for service or " letters of request ".

2. Nevertheless, the State applied to may require from the applicant State repayment of the expenses payable to witnesses and experts and of the costs of employing an executory officer when this is necessary owing to the refusal of witnesses to appear of their own accord. It may also require repayment of any expenses incurred as a result of the employment of a special procedure for the service of documents or the execution of " letters of request ".

Article 17.

1. Each of the two States shall be entitled to cause documents to be served on its own nationals within the territory of the other State by its diplomatic or consular representatives without the use of compulsion.

2. The same shall apply to the execution of " letters of request ".

3. Should difficulties arise in regard to the application of this Article, the procedure laid down in Articles 9 and 12 shall be followed.

Article 18.

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible in Berlin.

2. The Convention shall come into force three months after the exchange of the instruments of ratification. It may be denounced by either Party, but shall remain in force for six months after denunciation.

In faith whereof the Plenipotentiaries have signed the present Convention and thereto affixed their seals.

Done in duplicate at Angora, May 28, 1929.

(Seal) Rudolf NADOLNY.

(Seal) Wilhelm PADEL.

(Seal) A. ŞEVKI.